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Department of State

TELEGRAM

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ACTION 10-10

INFO OCT-01 ISO-00 CPR-01 NEA-10 EUR-12 FBIE-00 USSS-00

SY-05 CIAE-00 DODE-00 INR-07 NSAE-00 PA-02 USIA-15

PRS-01 SP-02 L-03 SS-15 NSC-05 (ISO) W
094098

R 022131Z JAN 76
FM USMISSION USUN NY
TO SECSTATE WASHDC 5236
INFO AMEMBASSY ROME

UNCLAS USUN 0006

E.O. 11652: N/A

TAGS: PINS IT

SUBJ: INCIDENT AT OFFICE OF VATICAN OBSERVER TO UNITED NATIONS
1. ON DECEMBER 31, 1975, FIFTEEN MEMBERS JEWISH DEFENSE
LEAGUE SEIZED OFFICE OF PERMANENT OBSERVER OF HOLY SEE TO
UNITED NATIONS, AND HELD IT FOR NEARLY AN HOUR, SEEKING PAPAL
ENDORSEMENT OF ISRAELI AIMS. VATICAN OBSERVER JOHN CHELI
SUMMONED POLICE AFTER GROUP HAD OUSTED HIM FROM HIS OFFICE
ON THE 4TH FLOOR OF 20 EAST 72ND STREET, AT 10:35 A.M.
POLICE DIRECTED PROTESTORS TO LEAVE WHICH THEY DID, AFTER
HAVING PRESENTED MONSIGNOR CHELI WITH MEMORANDUM WHICH IN
PART PROTESTED SPEECH BY POPE PAUL TO COLLEGE OF CARDINALS
WHEREIN POPE ASKED ISRAELI PEOPLE TO RECOGNIZE RIGHTS OF
PALESTINIANS. MONSIGNOR CHELI INFORMED INTRUDERS HE WOULD
TRANSMIT MEMO TO VATICAN.

2. DEMONSTRATORS CAUSED NO PROPERTY DAMAGE, AND COMMITTED
NO ASSAULT TO PERSONNEL. NO ARRESTS WERE MADE BY POLICE
DEPARTMENT.

3. MATTER WAS PRESENTED TO AUSA SCHWARTZ, SOUTHERN DISTRICT
NEW YORK, WHO ADVISED HE WOULD DECLINE PROSECUTION OF DEMONSTRATORS
FOR VIOLATION OF ACT FOR PROTECTION OF FOREIGN OFFICIALS.
MOYNIHAN

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DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY MA DATE 3.13.81
RDS ☐ or XDS ☐ EXT. DATE
TS AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED ☐ RELEASABLE ☒
RELEASE DENIED ☐
PA or FOI EXEMPTIONS

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1. AUTH. REASON(S)
2. DATED EXPIRING MARKINGS
3. UNCLASSIFIED BY REFERENCE
4. RELEASE DATED
PA or EOL EXEMPTIONS

TO : M - Mr. Eagleburger

FROM: L - Michael Sandler

176055-1786

Threats to Soviet Diplomats,
Applicable Statute and Court Order

Summary

Members of the Jewish Defense League who threaten violence to Soviet diplomats are subject to both 18 U.S.C. 112(c) (Tab 1), and a court order of 1971 by Judge Dollinger of the New York County Supreme Court (Tab 2).

The Justice Department's apparent reluctance to prosecute JDL demonstrators under 18 U.S.C. 112(c) is perplexing. The statute was enacted in 1972 with this very problem in mind. It imposes criminal sanctions against anyone who "parades, pickets, displays any flag, banner, sign, placard, or device" within 100 feet of diplomatic premises "for the purpose of intimidating, coercing, threatening or harrassing any foreign official"

The placards used by the JDL in the past week would certainly seem to qualify as "intimidating, coercing, threatening or harrassing." The slogans

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include: "It's 3:30, do you know where your children are"; "Soviet Diplomats as Hostages"; and "Russian Blood on N.Y. Streets."

The real problem seems to be the 100 foot limitation. Until recently, N.Y. police had fixed their barriers about 60 feet from the Soviet Mission; thus JDL demonstrators were within the 100 feet required by 18 U.S.C. 112(c). This past week, however, following discussions with the U.S. Attorney's Office in New York, N.Y. police fixed their barriers at about 120 feet from the Soviet Mission. Twelve demonstrators were then allowed to a point exactly 100 feet of the Mission (Tab 3). As a consequence, the JDL demonstrators arrested last Thursday were outside the 100 foot limit.

We do not know if Justice asked the N.Y. police to keep the demonstrators beyond 100 feet. Besides making section 112(c) inapplicable, such a request would make it difficult for Justice to tell the N.Y. police in the future to bring the barriers back to 60 feet; this might give persons arrested in the future a legal argument that they entrapped into violating the 100 foot limit. But Justice could, in our view, tell the N.Y. police that where the police placed their barriers should be governed solely by the need to protect the Soviet Mission and, at the same time, inform the N.Y. police that the United States will prosecute persons arrested for violating 18 U.S.C. 112.

If JDL demonstrators continue to be kept more than 100 feet from the Soviet Mission, prosecution might be possible under paragraph (b) of section 112 (see Tab 1). But this is a weaker provision than paragraph (c) because it is less specific on the question of picketting, and thus a successful prosecution would be uncertain.

The Chief of the Criminal Division of the U.S. Attorney's Office in New York, Tom Edwards, has indicated to Mr. Rosenstock of the U.S. Mission that he would be willing to prosecute persons who violate 18 U.S.C. 112(c). The N.Y. Police Commissioner has also indicated that he would be willing to make arrests provided that he had both a federal request

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for arrests as well as assurances of federal prosecution. Without such assurances, he said, the arresting officers would face potential personal liability under recent civil rights statutes.

The JDL demonstrators arrested by the N.Y. police on Thursday were charged with violating a 1971 court order by Judge Dollinger (see Tab 2). But that court order is also weaker than paragraph (c) of section 112. Our lawyers in New York believe that the charges against those arrested on Thursday will probably be dismissed - the local New York courts are overburdened and Judge Dollinger's order was not as explicit as it could have been on the subject of placards. A prosecution under the more specific provisions of 18 U.S.C. 112(c) would of course take place in federal court and is the best hope for success.

Finally, Justice may have some concern about paragraph (c) of section 112, which states that nothing in section 112 should be construed as abridging any constitutional rights. Perhaps Justice believes that a prosecution under section 112(c) would violate constitutional rights of free speech. However, the right of free speech is not unlimited, but is subject to public interests which are clearly of overriding importance. We believe that our international legal obligation to protect foreign diplomats would undoubtedly be recognized as an overriding public interest, at least insofar as the specific language of section 112(c) is concerned.

Background/Analysis of 18 U.S.C 112

Following an escalation of terrorism directed at diplomatic personnel and foreign officials the Departments of State and Justice prepared legislation for the protection of foreign officials, which was submitted to the Congress on August 5, 1971, enacted on October 11, 1972 and signed into law on October 24, 1972. The bill dealt with serious crimes against

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foreign officials (murder, kidnapping, assault, etc.) but also contained misdemeanor offenses involved in the protection of foreign officials and official guests (§112 - Tab 1). Since 1938 the D.C. Code had contained a section on protection of foreign officials and diplomatic property similar to section 112 (D.C. Code 22-115). The need for federal legislation was apparent from the growing number of incidents in New York involving diplomatic missions to the U.N., particularly JDL activities directed against the Soviet Mission. These incidents took the form not only of assaults, but of a variety of harrassments like insulting, demeaning and threatening placards, shouted (often electronically amplified) obscenities, spitting and obscene or threatening telephone calls. Subsection (c) was inserted specially to address these less severe, but equally disturbing, acts against foreign officials. Thus section 112 found its way into the Federal Criminal Code.

The language of section 112(c) is clear and unambiguous. It lists several specific actions involving signs and placards, which are proscribed when done within 100 feet of a diplomatic mission and with a purpose of "intimidating, coercing, threatening or harrassing any foreign official." Such a purpose could be manifested by the language employed, or by an established pattern of conduct of a broader nature which, when taken together with an otherwise vaguely worded threat on a placard, could produce in the mind of the targetted foreign official a sense of fear or alarm. It seems to us that a clear insinuation of kidnapping, as occurred on the JDL placards of this past week ("Soviet Diplomats as Hostages" - "It's 3:30, do you know where your children are?"), would be viewed by the courts as an intimidation, threat or harrassment. The legislative history indicates that the purpose of this section is to "protect the peace, dignity and security of foreign officials and guests in their embassies, consulates, missions, residents and offices." (Senate Report 92-1105, at 19).

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The only basis for restraint in enforcing this anti-demonstration part of section 112 would be the caveat set forth in paragraph (c) which reads:

"Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment of the Constitution of the United States."

It might be argued that this means that rights of free speech should take precedence over the enforcement of section 112(c). It is difficult, however, to be inhibited by this caveat when one considers that a similar provision in the D.C. Code has survived constitutional attack for almost forty years. This fact was recognized in the House Report to 18 U.S.C. 112(c):

"Since the provision in section 112(c) is similar to one enacted by Congress in 1938 to protect foreign officials and diplomatic property in the District of Columbia (D.C. Code 22-1115), it is relevant to note that the District of Columbia law has been the subject of several court tests and has been consistently upheld as constitutional. The first such decision is the 1938 opinion of the U.S. Court of Appeals. (*Freund v. United States*, 69 App. D.C. 281, 100 F.2d 691 (1938), cert. den. 306 U.S. 640). The court in that case considered the question of whether there was a violation of First Amendment rights and noted that anyone could continue to express an opinion with regard to any ruler or with regard to any government. Since the law only prohibited demonstrations in certain limited places, the court concluded that the 500 foot rule was a reasonable and proper restriction."

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"The continued validity of the Brand holding was reaffirmed by three opinions in 1970: by the District of Columbia Court of Appeals (Zaimi v. United States, 261 A.2d 233); the United States District Court for the District of Columbia (Jews for Urban Justice v. Wilson, 311 F. Supp. 1158); and by the District of Columbia Court of General Sessions, in an unreported opinion (United States v. Travers, Crim. No. U.S. 42935-69)."

A Justice Department opinion on this question recognized that "the comparative specificity of (section 112(c)) and the limited radius of application go far to avoid any such abridgment." The opinion concluded, after citing the House Report language quoted above, that "the general power of the United States to protect its foreign relations includes the specific power to limit demonstrations by enactment of subsection 112(c)." This conclusion is clearly supportable in the light of a long list of Supreme Court decisions which circumscribe the otherwise broad guarantees of the first amendment.

The Justice Department sent a letter to the U.S. Attorney (S.D.N.Y.) on July 19, 1974 to clarify various problems encountered in enforcing the federal statutes in New York. This letter contains the following views on the harassment issue:

"State Department in conjunction with UNUN will continue efforts to educate mission personnel on what may seem to them, in light of their own cultures, to be a remarkable freedom to demonstrate in public places. The precise point at which legitimate speech, albeit robust, coarse, perhaps rude, become harassment is a matter on which opinions

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will differ. While the Act is, of course, our guide, it is our view that a single or several shouted epithets probably would not suffice, but continued, repetitive, long prolonged 'communication' in such terms would evidence harrassment to most."

In sum, there is not in our view an overriding constitutional basis to withhold arrest or prosecutorial authority where there has been a clear violation of the statute.

Judge Dollinger's Order

In July, 1971, Judge Dollinger of the New York County Supreme Court issued an Order following a motion filed by residents in the vicinity of the Soviet Mission to the United Nations. The residents wanted to force the N.Y. police to remove barriers on 67th Street between Lexington and 3rd Avenues and to forbid the JDL and other organizations from demonstrating in the general area. Judge Dollinger ordered, inter alia, that members of the JDL and of the other named organizations be enjoined from picketing in the immediate vicinity of the Soviet Mission except that 12 demonstrators would be permitted to engage in orderly and peaceful picketing in the area of the Mission.

In accordance with this Dollinger Order, the New York City Police, the evening of April 8, kept a large number of demonstrators over 120 feet from the Soviet Mission in New York - but allowed 12 demonstrators into a special area exactly 100 feet of the Soviet Mission. When the demonstrators began shouting "free Maria Tienkein" the police warned against the shouting, and then arrested those of the 12 demonstrators who continued to shout. In this instance, the words shouted were interpreted by the police as going beyond "peaceful and orderly" picketing.

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Attachments:

Tab 1 - 18 U.S.C. 112

Tab 2 - Judge Dollinger's Order

Tab 3 - Cable: USUN 1471

Drafted: L:MSandler; L/SFP:LFields; L/EUR:JWillis:jm
x 22149 x21462 x22559 4/10/76

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October 14, 1972

Pub. Law 92-437

TITLE III—PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL GUESTS

Sec. 304. Section 412 of title 18, United States Code, is amended to read as follows:

"§ 112. Protection of foreign officials and official guests

"(a) Whoever assaults, seizes, detains, kidnaps, or otherwise wrongs a foreign official or official guest shall be fined not more than \$10,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

"(b) Whoever willfully intimidates, coerces, threatens, or harasses a foreign official or an official guest, or willfully obstructs a foreign official in the performance of his duties, shall be fined not more than \$500, or imprisoned not more than six months, or both.

"(c) Whoever within the United States but outside the District of Columbia and within one hundred feet of any building or premises belonging to or used or occupied by a foreign government or by a foreign official for diplomatic or consular purposes, or as a mission to an international organization, or as a residence of a foreign official, or belonging to or used or occupied by an international organization for official business or residential purposes, publicly—

"(1) parades, picks, displays any flag, banner, sign, placard, or device, or utters any word, phrase, sound, or noise, for the purpose of intimidating, coercing, threatening, or harassing any foreign official or obstructing him in the performance of his duties, or

"(2) congregates with two or more other persons with the intent to perform any of the aforesaid acts or to violate subsection (a) or (b) of this section,

shall be fined not more than \$500, or imprisoned not more than six months, or both.

"(d) For the purpose of this section 'foreign official', 'foreign government', 'international organization', and 'official guest' shall have the same meanings as those provided in sections 1116 (b) and (c) of this title.

"(e) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

Sec. 305. The analysis of chapter 2 of title 18, United States Code, is amended by deleting

"112. Arresting certain foreign diplomats and other official personnel" and adding at the beginning thereof the following new item:

"112. Protection of foreign officials and official guests."

TITLE IV—PROTECTION OF PROPERTY OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Sec. 401. Chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 970. Protection of property occupied by foreign governments

"(a) Whoever willfully injures, damages, or destroys, or attempts to injure, damage, or destroy, any property, real or personal, located within the United States and belonging to or utilized or occupied by any foreign government or international organization, by a foreign official or official guest, shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

Offenses and penalties.

Democratizations.

66 STAT. 1032

66 STAT. 1073

Definitions.

Article No. 1071.

USC pres.
Title I.

62 Stat. 742,
18 USC 951.

Offenses and penalties.